

373-381 South Broadway Associates and Sunview Management Corp. and Service Employees International Union, Local 32E, AFL-CIO.
Case AO-288

September 27, 1991

SUPPLEMENTAL ADVISORY OPINION

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Pursuant to Sections 102.98(a) and 102.99 of the National Labor Relations Board's Rules and Regulations, on June 17, 1991, 373-381 South Broadway Associates and Sunview Management Corp. (Petitioners) filed a petition for an Advisory Opinion as to whether the Board would assert jurisdiction over their operations.

Subsequently, on July 31, 1991, the Board issued its Advisory Opinion.¹ The Board advised the parties that it would assert jurisdiction over Petitioner Sunview, the managing agent of the subject building,² but that it was unable to issue a meaningful opinion whether it would assert jurisdiction over Petitioner South Broadway, the owner of the building, since the petition failed to specify what portion of the alleged \$509,448 in annual rental income from the building was derived from the residential apartments and what portion was derived from the commercial stores tenanted the building, or whether South Broadway was a joint employer with Sunview of the employees at the building.

Thereafter, on August 29, 1991, Petitioner South Broadway filed a supplemental affidavit with the Board. The supplemental affidavit alleges that \$404,292 of the annual rental income from the subject building is derived from the residential apartments and \$105,156 is derived from the commercial stores tenanted the building. In addition, the supplemental affidavit alleges that the day-to-day business operations of Sunview and South Broadway are jointly controlled and directed by Moty Movtady, one of the companies' common owners.³

Although all parties were served with a copy of South Broadway's supplemental affidavit, none have filed a response thereto.

¹ 303 NLRB 973.

² The Board (Member Oviatt dissenting) found jurisdiction appropriate over Petitioner Sunview based on the petition's allegation that the annual rental income from all the residential and commercial properties managed by Sunview in addition to the subject building exceeded \$1 million—the highest discretionary jurisdictional monetary standard the Board applies to any enterprise. *Id.*

³ According to the supplemental affidavit, Moty and Jacob Movtady, the sole (100 percent) owners of Sunview, also have a 42.5 percent ownership interest, individually or through their other corporate holdings, in South Broadway. As further evidence of the relationship between the two companies, South Broadway also refers to and attaches a copy of a November 6, 1989 employment contract between South Broadway and the superintendent of the building which was prepared under Sunview's letterhead and was signed by the then-president of Sunview, Irving Schechtman.

Having duly considered the matter, we now find, based on the allegations in the supplemental affidavit, that we would assert jurisdiction over South Broadway as well as Sunview. Although the commerce data set forth therein remain insufficient to independently establish jurisdiction over South Broadway,⁴ it is well established that the commerce data of joint or single employers may appropriately be combined for jurisdictional purposes.⁵ Here, the supplemental affidavit alleges that the day-to-day business operations of South Broadway and Sunview are jointly controlled and directed by a common owner. Thus, given that the Board has already determined in its prior opinion that jurisdiction may properly be asserted over Sunview based on its commerce data, and assuming that Sunview and South Broadway are in fact a joint or single employer of the employees at the subject building, we find that jurisdiction may also properly be asserted over South Broadway.

Accordingly, the parties are advised that, based on the foregoing allegations and assumptions, the Board would assert jurisdiction over South Broadway as well as Sunview.⁶

MEMBER OVIATT, dissenting.

Contrary to my colleagues, and notwithstanding South Broadway's supplemental affidavit, I continue to find the allegations insufficient to issue a meaningful opinion on whether jurisdiction may properly be asserted over either or both of the petitioners. First, as indicated in my earlier dissent in the instant case (303 NLRB 973), in my view Sunview has failed to submit sufficient information to conclude that it is within the Board's jurisdiction. I cannot determine from the petition's allegations whether the Employer's operations would *separately* satisfy either the residential or commercial standard. Second, as the majority notes, the allegations in South Broadway's supplemental affidavit remain inadequate to determine whether jurisdiction may independently be asserted over South Broadway's

⁴ See *Parkview Gardens*, 166 NLRB 697 (1967), and *Imperial House Condominium*, 279 NLRB 1225 (1986), *affd.* 831 F.2d 999 (11th Cir. 1987) (establishing \$500,000 standard for residential apartments and for condominiums and cooperatives, respectively), and *Mistletoe Operating Co.*, 122 NLRB 1534 (1959) (holding that jurisdiction will be asserted over commercial office buildings when the employer's gross annual revenue amounts to \$100,000, of which \$25,000 is derived from organizations whose operations meet any of the Board's standards exclusive of the indirect outflow or indirect inflow standards). Here, the supplemental affidavit does not address whether at least \$25,000 of South Broadway's rental income is derived from organizations whose operations meet any of the Board's standards exclusive of the indirect outflow or indirect inflow standards.

⁵ See, e.g., *Jacob Wirth Restaurant*, 248 NLRB 191 (1980), *enfd.* 646 F.2d 706 (1st Cir. 1981); *Normandy Square Food Basket*, 163 NLRB 369 (1967); and *Pacific Hosts, Inc.*, 156 NLRB 1467 (1966).

⁶ The Board's advisory opinion proceedings under Sec. 102.98(a) of the Board's Rules are designed primarily to determine whether an employer's operations meet the Board's "commerce" standards for asserting jurisdiction. Accordingly, the instant Advisory Opinion is not intended to express any view as to whether the Board would certify the Union as representative of the petitioned-for unit under Sec. 9(c) of the Act. See generally Sec. 101.40(e) of the Board's Rules.

operations. Thus, even if Sunview and South Broadway are joint employers, I am unable to conclude, based on the present allegations, that jurisdiction may properly be asserted over either company.